

*Court of Appeals*  
*Fourth Court of Appeals District of Texas*  
*San Antonio*



**MEMORANDUM OPINION**

No. 04-12-00140-CV

**IN RE AMERICAN POWER CONVERSION CORPORATION**

Original Mandamus Proceedings<sup>1</sup>

Opinion by: Phylis J. Speedlin, Justice

Sitting: Karen Angelini, Justice  
Phylis J. Speedlin, Justice  
Rebecca Simmons, Justice

Delivered and Filed: November 14, 2012

**PETITION FOR WRIT OF MANDAMUS CONDITIONALLY GRANTED**

This case is before us on Relator American Power Conversion Corporation's motion for rehearing. Because the information provided in the motion to reconsider and the response shed new light on the various classes of products, we grant the motion for rehearing, withdraw our opinion and order dated July 5, 2012, and substitute the following in their place.

This case stems from a house fire and the resulting product liability lawsuit. Real Parties in Interest, Sara Villarreal, Individually and as Next Friend of Carlota Martinez, Rosalia Godina Medel, Individually, and Rosalia Godina Medal and Alvaro J. Medel on Behalf of the Estate of

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<sup>1</sup> This proceeding arises out of Cause No. 6660, styled *Sara Villarreal, Individually and as Next Friend of Carlota Martinez, a Minor and Rosalia Godino Medel, Individually, and Rosalia Godina Medel and Alvaro J. Medel on behalf of the Estate of Karina Medel, Plaintiffs/Intervenors v. Alvaro J. Medel, Defendant/Cross-Plaintiff and Best Buy Stores, L.P., American Power Conversion Corporation, EMachines, Gateway Companies, Inc., and Acer America Corporation, Defendants/Cross-Defendants*, pending in the 49th Judicial District Court, Zapata County, Texas, the Honorable Jose A. Lopez presiding.

Karina Medel (collectively “plaintiffs”)<sup>2</sup> filed suit against various computer companies and American Power Conversion Corporation (“APC”)<sup>3</sup> alleging their products caused the fatal house fire in question. APC argues that the trial court’s discovery orders are not reasonably tailored to include only relevant matters. More specifically, because the plaintiffs failed to show a link between the requested items and any alleged defect, the trial court abused its discretion.

### **BACKGROUND**

The Medels purchased a computer and power supply/surge protector, manufactured by APC, at a Best Buy store in December of 2006. Approximately two months later, on February 26, 2007, a fire occurred at the Medel residence resulting in the loss of life of seven-year-old Karina Medel. The plaintiffs’ petition accuses APC of design, manufacturing, and marketing defects. APC urges that the specific defects causing the fire are not identified in either the plaintiffs’ pleadings or their discovery responses. The pleadings do, however, provide that the BE350R (the specific model purchased by the Medels at Best Buy) was “defective, had inferior components, and unreasonably dangerous.” At a hearing, plaintiffs’ counsel explained, “The defect in this case is the battery backup caught on fire.”

APC manufactures product lines that include different features for different sets of customers, ranging from home users, to businesses, to large-scale data centers. In this case, the product in question is a line of uninterruptible power supply products known as “back-UPS.” APC manufactures, sells, and has offices in North America, South America, Europe, and Asia with documents and responsive materials located in sites around the world.

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<sup>2</sup> Although properly titled Real Parties in Interest in the current proceeding, because all parties refer to this group of plaintiffs, intervenors, and cross-plaintiffs as “plaintiffs,” we will also refer to the group of parties jointly as “plaintiffs.”

<sup>3</sup> Plaintiffs sued Best Buy (the retail seller of the computer system), Emachines, Gateway, and/or Acer (the manufacturer of the computer), and American Power Conversion Corporation (the manufacturer of the computer power supply/surge protector). APC is the only relator in these proceedings.

In twenty-seven different requests, the plaintiffs asked that “APC produce all documents regarding the 350 series and 500 series back up power supply units/devices batteries.” The requests were made without time restrictions. In these requests for production, the plaintiffs requested all technical bulletins, engineering change orders and/or electronic data, in-house and external documents and/or electronic data for any testing performed, test process summaries, task reports, “Safety Critical Incident Reports,” “Corrective Action Discussion,” “Corrective Action Record,” and “Failure Mode and Effects Analysis.” They sought documents and/or electronic data as a result of individual complaints, merchant complaints, or the return of any 350 or 500 series back-UPS. The plaintiffs also sought copies of all photos and/or schematics of the internal components and documents and/or electronic data identifying the internal components, data on when or why units were discontinued or replaced, and U.S. Consumer Product Safety Commission recalls.

APC objected to the plaintiffs’ requests contending, in part, that the only relevant discovery relates to documentation of the BE350R and they had complied with the request by producing over 800 documents. Additionally, APC explained that the products similar to the BE350R, which are manufactured by APC, include the BE350U, BE500U, BE500R, and the BE550R.

After considering written objections and listening to arguments of counsel, the trial court ordered APC to produce the following:

- (1) APC back-UPS “CS” and “ES” sub-family class 350 series and 500-599 series back up power supply products designed, manufactured or sold in English speaking countries from January 2000 to the present;
- (2) All discovery produced in relation to the *Stewart* lawsuit;
- (3) Copy of all “PB 137” (printed circuit board 137) and/or any other printed circuit board complaints; and

- (4) Copy of all internal analysis of “PB 137” and/or any other printed circuit board failures for the 350 series and 500 series back-up power supply units/devices/batteries.

### **JURISDICTION**

“[An] order that compels overly broad discovery well outside the bounds of proper discovery is an abuse of discretion for which mandamus is the proper remedy.” *Dillard Dep’t Stores, Inc. v. Hall*, 909 S.W.2d 491, 492 (Tex. 1995); *see also In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). Similarly, mandamus relief may be available when the trial court compels production beyond the permissible bounds of discovery. *In re Weekley Homes, L.P.*, 295 S.W.3d 309, 322–23 (Tex. 2009) (orig. proceeding); *see In re Am. Optical Corp.*, 988 S.W.2d 711, 714 (Tex. 1998) (orig. proceeding) (concluding that no adequate appellate remedy existed where the trial court ordered overly broad discovery). “If an appellate court cannot remedy a trial court’s discovery error, then an adequate appellate remedy does not exist.” *In re Dana Corp.*, 138 S.W.3d 298, 301 (Tex. 2004) (orig. proceeding); *see Walker v. Packer*, 827 S.W.2d 833, 843 (Tex.1992) (orig. proceeding) (noting that a party will not have an adequate remedy by appeal when a trial court’s order “imposes a burden on the producing party far out of proportion to any benefit that may obtain to the requesting party”).

### **DISCOVERY ORDER**

#### **A. Standard of Review**

An appellate court reviews a trial court’s ruling on discovery requests for abuse of discretion. *See Gen. Tire, Inc. v. Kepple*, 970 S.W.2d 520, 526 (Tex. 1998); *Johnson v. Davis*, 178 S.W.3d 230, 242 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). Trial courts have broad discretion in matters of discovery. *Johnson*, 178 S.W.3d at 242. A trial court abuses its discretion when it makes a decision “so arbitrary and unreasonable as to amount to a clear and

prejudicial error of law.” *Walker*, 827 S.W.2d at 839; *see also In re CSX Corp.*, 124 S.W.3d 149, 151 (Tex. 2003) (orig. proceeding). When the decision turns on a determination of the facts, an appellate court may not substitute its judgment for that of the trial court. *Walker*, 827 S.W.2d at 840. Yet, when a trial court fails to analyze or apply the law correctly in regard to legal principles, the appellate review is less deferential. *Id.*

Generally, a trial court maintains the discretion to define the scope of discovery allowed under the rules of civil procedure but must remain cognizant of the duty to impose reasonable limits on discovery requests. *In re Am. Optical*, 988 S.W.2d at 713. More specifically, reasonable discovery bears a “reasonable expectation of obtaining information that will aid the dispute’s resolution” and must be “‘reasonably tailored’ to include only relevant matters.” *In re CSX Corp.*, 124 S.W.3d at 152; *In re Graco Children’s Prod., Inc.*, 210 S.W.3d 598, 601 (Tex. 2006) (orig. proceeding); *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 180–81 (Tex. 1999) (orig. proceeding) (holding that discovery requests must be reasonably tailored to include only matters relevant to the case and may not be used as a fishing expedition or to impose unreasonable discovery expenses on the opposing party); *see also* TEX. R. CIV. P. 192.3 (discovery should be of information “reasonably calculated to lead to the discovery of admissible evidence”). When a trial court’s discovery order fails to narrowly tailor the requested discovery to relevant matters, it is impermissibly overbroad. *In re Alford Chevrolet-Geo*, 997 S.W.2d at 180 n. 1. Additionally, a trial court’s discretion in defining the scope of discovery is tempered by the duty to impose reasonable limits on discovery requests. *See* TEX. R. CIV. P. 192.3; *In re CSX Corp.*, 124 S.W.3d at 152; *In re Am. Optical*, 988 S.W.2d at 713.

Without question, the scope of discovery exceeds the scope of admissible evidence, and a party need not prove information is admissible in order for the same to be discoverable. *Axelson*,

*Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex. 1990) (Discovery requests are liberally construed to allow litigants to obtain the “fullest knowledge of the facts and issues prior to trial.”). The rules of civil procedure require that a request for discovery be “relevant to the subject matter of the pending action.” *See* TEX. R. CIV. P. 192.3. Under Texas Rules of Evidence 401 and 402, relevant evidence has a “tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” *See* TEX. R. EVID. 401, 402. Although the products need not be identical, there must be “a connection between the alleged defect and the discovery ordered.” *In re Exmark Mfg. Co., Inc.*, 299 S.W.3d 519, 529–30 (Tex. App.—Corpus Christi 2009, orig. proceeding [mand. disp’g]). We remain mindful that a reasonably tailored discovery request is not overbroad merely because it may include information that is of doubtful relevance, and “parties must have some latitude in fashioning proper discovery requests.” *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995). Importantly, the party objecting to discovery bears the burden to present any and all evidence necessary to support its objections. *See* TEX. R. CIV. P. 193.4(a), 199.6; *In re CSX*, 124 S.W.3d at 151.

It is undisputed that the product purchased at Best Buy, and at issue, is the APC model number BE350R and the discovery requests must be relevant to that model.<sup>4</sup>

**B. CS Family of Products and Requests for Production 71 and 73 (the PB 137 Circuit Board Requests)<sup>5</sup>**

The plaintiffs bear the initial burden to craft a discovery request that is narrowly tailored to include only relevant matters. If objected to, the movant has the burden to establish the

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<sup>4</sup> APC proclaimed, before the trial court and on appeal, that the products similar to the BE350R include the BE350U, BE500U, BE500R, and the BE550R. Because APC’s responses provide a reasonable expectation that discovery related to these product numbers will provide information relevant to the present case, our opinion does not affect any determination by the trial court regarding the BE350U, BE500U, BE500R, or the BE550R.

<sup>5</sup> PB 137 was the circuit board in the CS family products subject to the recall.

request overbroad or seeks irrelevant information. The trial court abuses its discretion by ordering discovery of irrelevant information. *Texaco*, 898 S.W.2d at 815. *See also* TEX. R. CIV. P. 192.3; TEX. R. EVID. 401, 402. More specifically, the plaintiffs must show a reasonable expectation of obtaining information that would aid or assist in the resolution of the case at hand. *See In re CSX*, 124 S.W.3d at 152; *In re Am. Optical*, 988 S.W.2d at 713; *In re Exmark*, 299 S.W.3d at 529–30 (requiring connection between alleged defect and requested discovery).

A manufacturing defect exists “when a product deviates, in its construction or quality, from the specifications or planned output in a manner that renders it unreasonably dangerous.” *BIC Pen Corp. v. Carter*, 346 S.W.3d 533, 540 (Tex. 2011) (quoting *Cooper Tire & Rubber Co. v. Mendez*, 204 S.W.3d 797, 800 (Tex. 2006)). The plaintiffs aver that unless APC’s product is designed to catch on fire, the fact that it does catch on fire is a defect. APC counters that without a specified defect, the plaintiffs’ discovery requests constitute the type of “fishing expedition” that the courts continually strike down. *See In re CSX*, 124 S.W.3d at 153; *In re Ace Credit Servs., LLC*, 2010 WL 1491780, 2 (Tex. App.—San Antonio 2010) (orig. proceeding) (cautioning that discovery can become “a weapon capable of imposing large and unjustifiable costs on one’s adversary.”); *see also In re Alford Chevrolet-Geo*, 997 S.W.2d at 180.<sup>6</sup>

In addition to the plaintiffs’ claims of “fire” similarity, the plaintiffs assert their request for CS products stems from a previous APC product recall. The plaintiffs argue that CS products are tied to previous fire concerns. “The fact that there’s a recall, a recall based on the . . . CS subfamily, that the recall catches on fire or is a fire hazard, which is what we’re saying is the

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<sup>6</sup> APC also argued that the plaintiffs were asked, in a proper interrogatory, their contention of the alleged defect. Over APC objection, the trial court refused to compel a substantive answer to plaintiffs’ response “I’m not an expert . . . I don’t know.” Because this issue was not included in the trial court’s order, it was not properly before this court. TEX. R. APP. P. 33.1.

defect in our case.” As proof of such, the plaintiffs point to the 2003 voluntary recall of a CS subfamily in the BK series of products due to “potential overheating and fire hazard.”<sup>7</sup>

APC counters that the CS products are a different design and the circuitry, or anything similar to that circuitry, has not been used since 2003. The BE350R, on the other hand, was not manufactured before 2005 and has totally different circuitry than those models. As such, APC urges the CS family of products is irrelevant to the case at hand.

There is no question the CS models pre-dated the BE350R. Yet, in their initial burden of proving relevance, the plaintiffs failed to establish a correlation between the two product lines. The Texas Supreme Court opinion in *In re Deere & Co.*, 299 S.W.3d 819, 820 (Tex. 2009), is instructive. The *In re Deere* court recognized that the plaintiff’s injuries resulted from the step and handle mechanism on the Deere product. *Id.* The court, therefore, narrowed the proposed orders from “any model backhoe” to products with handles and step assemblies similar to the 410D in question. *Id.* Because the plaintiff was injured on the step mechanism, any product with a similar design was relevant to the case at hand. *Id.*; *see also In re Graco*, 210 S.W.3d at 600–01 (limiting discovery requests to products containing a harness clip similar to the one utilized in the car seat at issue); *In re Exmark*, 299 S.W.3d at 529–30 (focusing order on the production of documents with a lack of rollover protective systems on zero-turn riding lawnmowers and different models of the same basic product was reasonably tailored to the relevant product defect).

APC’s voluntary recall of products from the CS subfamily due to “potential overheating and fire hazard does not, without evidence of a further connection, make the recalled products discoverable in this suit. As such, the plaintiffs failed to establish the relevance of their request

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<sup>7</sup> Before the trial court, APC asserted this recall included the BK350, BK500, and BK500BLK power supply devices. The recall notice, however, listed twenty-one different model numbers and contained products with model numbers containing 325, 350, 475 and 500.



and the trial court abused its discretion in ordering the discovery of the CS class of products and the PB 137 circuit board that were subject to the 2003 APC voluntary recall.<sup>8</sup>

### **C. ES Family of Products**

The plaintiffs next argue that the BE350R is in the ES family of products and, therefore, discovery requests relating to other products in the ES family is relevant. APC agrees that the BE350R is in the ES family of products. Beyond that distinction, however, the record does not support any allegations that the ES family has identical circuitry or design. The only evidence offered to the trial court was that the BE350R was a member of the ES family. APC thus contends that the broad discovery request for the entire ES family of products is not reasonably tailored to include only matters relevant to the case, and is instead a fishing expedition. *See In re Graco*, 210 S.W.3d at 601. We agree. Because the plaintiffs failed to link the BE350R product with the other models contained within the ES family, the request is not narrowly tailored to include only relevant materials. *In re CSX*, 124 S.W.3d at 152. Accordingly, the trial court abused its discretion with regard to the production of the APC models contained within the entire ES family.

### **D. Stewart Litigation Documents**

The *Stewart* litigation was a settled claim stemming from a house fire in which allegations were levied that a different APC product, model number BF350U, caught fire causing damage and loss of life. Discovery in other lawsuits may be allowed when the information sought is relevant, that is, when the other lawsuits have a material connection to an issue in the case, or present the same or similar issues, or are factually similar. *See Garcia v. Peeple*, 734

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<sup>8</sup> We need not determine whether APC produced sufficient evidence to counter the plaintiffs' argument. Although APC bore the burden to bring forward evidence to counter the plaintiffs' allegations of relevancy, the plaintiffs bore the initial burden of showing a "reasonable expectation" that the requested information was relevant. *In re Am. Optical*, 988 S.W.2d at 713; *see also In re CSX*, 124 S.W.3d at 152.

S.W.2d 343, 346–47 (Tex. 1987); *IFS Sec. Group, Inc. v. Am. Equity Ins. Co.*, 175 S.W.3d 560, 564 (Tex. App.—Dallas Oct 31, 2005, no pet.). However, just because a party produced documents in one lawsuit does not necessarily mean that party may be forced to produce the documents in an entirely different lawsuit. *In re Rogers*, 200 S.W.3d 318, 324 (Tex. App.—Dallas 2006) (orig. proceeding).

As evidence of similarity, the plaintiffs contend that the back-UPS in the *Stewart* case was a model contained within the ES family and there was evidence of fire hazard. The record, however, contains testimony that the *Stewart* litigation involved APC model BF350U, a model contained within APC's *office products*. Moreover, the testimony supports that the BF350U was discontinued in 2002, used a different inverter, circuit board, transformer, windings, and clamping system. The plaintiffs failed to provide a connection between the office product in question and the home-use model BE350R. We, therefore, conclude the plaintiffs failed to show that the *Stewart* litigation documents were relevant and the trial court abused its discretion in requiring the documents produced.

### CONCLUSION

In light of the evidence, the trial court abused its discretion in requiring production of:

- (1) APC back-UPS “CS” and “ES” sub-family class 350 series and 500-599 series back up power supply products designed, manufactured or sold in English speaking countries from January 2000 to the present;
- (2) All discovery produced in relation to the *Stewart* lawsuit;
- (3) Copy of all “PB 137” (printed circuit board 137) and/or any other printed circuit board complaints; and
- (4) Copy of all internal analysis of “PB 137” and/or any other printed circuit board failures for the 350 series and 500 series back-up power supply units/devices/batteries.

Accordingly, we conditionally grant the petition for writ of mandamus. The trial court is ordered to vacate paragraphs 59-62, and 64-65 in its Order Granting Intervenors and Defendant/Cross-Plaintiffs' 3rd Motion to Compel dated December 20, 2011.<sup>9</sup> The writ will issue only if the trial court fails to comply within fourteen days.

Phylis J. Speedlin, Justice

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<sup>9</sup> Because the plaintiffs failed to meet their initial burden of relevancy, we need not address the trial court's determinations regarding the affidavits submitted by APC.